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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-377

NEW JERSEY MANUFACTURERS INSURANCE COMPANY,

Petitioner,

vs.

MOTOR CLUB FIRE & CASUALTY CO. and FRANCES SCIBETTA,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of New Jersey

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL PROVISIONS	2
CONCISE STATEMENT OF THE CASE	2
ARGUMENT:	
1. Introduction	3
2. Jurisdiction to grant certiorari is absent pursuant to controlling cases	7
3. Jurisdiction to grant certiorari is absent pursuant to Rules 19 and 23	12
4. Jurisdiction is likewise absent with respect to petitioner's claims arising out of the grant of rehearing in the New Jersey Supreme Court	13
CONCLUSION	15
APPENDIX:	
A—Petition for Rehearing in the Supreme Court of New Jersey	1a

Cases Cited

Aero Transit Co. v. Commissioners, 332 U. S. 495	10
Albertson v. Millard, 345 U. S. 242 (1953)	10
Annoymous v. Baker, 360 U. S. 287 (1959)	8

PAGE

Bailey v. Anderson, 326 U. S. 203 (1945) 8

Barrows v. Jackson, 346 U. S. 249 (1953) 11

Chambers v. Mississippi, 410 U. S. 284 (1972) 8

CIO v. McAdory, 325 U. S. 472 (1945) 9

Coleman, et al. v. Alabama, 399 U. S. 1 (1970) 10

Columbia Railway Gas & Electric Co. v. South Carolina, 261 U. S. 245 (1923) 11

Commercial Bank v. Buckingham's Executors, 5 How 317 8

Cramp v. Board of Public Instruction of Orange County, 368 U. S. 278 (1961) 10

El Paso v. Simmons, 379 U. S. 497 (1965) 7

Garner v. Louisiana, 368 U. S. 157 (1961) 10

Kingsley International Pictures Corp. v. Regents, 360 U. S. 684 (1959) 10

Monks v. New Jersey, 398 U. S. 71 (1970) 9

Oxley Stove Co. v. Butter County, 166 U. S. 648 (1897) 8

Radio Station WOW v. Johnson, 326 U. S. 120 (1945) 8

Selected Risks Ins., Co. v. Zullo, 48 N. J. 362 4

Street v. New York, 394 U. S. 576 (1969) 9

Tidal Oil Co. v. Flanagan, 263 U. S. 444 (1924) 12

United States v. Burnison, 339 U. S. 87 10

United States Trust Company v. State of New Jersey, et al., 45 LW 4418 .....6, 7, 10

Winters v. New York, 333 U. S. 507 10

PAGE

Statutes Cited

L. 1972, C. 197 6

N.J.S.A. 39:6-23 4

N.J.S.A. 39:6-46 3

N.J.S.A. 39:6-48(b) 3

N.J.S.A. 39:6B-1 6

28 U.S.C.A.:

Sec. 1257(3) 2, 7

Rules Cited

Rule 19 .....7, 12, 13

Rule 19 (a) 12

Rule 23 12

Rule 23 (1) (b) 12

Rule 40(1)(c) 2

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Respondents.

On Petition for Writ of Certiorari to the Supreme Court of New Jersey

BRIEF IN OPPOSITION

Frances Scibetta, a respondent, opposes the Petition For A Writ Of Certiorari of New Jersey Manufacturers Insurance Company (hereafter referred to as NJM) and objects to the jurisdiction of the Court to grant the writ.

Opinions Below

Petitioner has properly referred to all opinions and reproduced them in its appendix (Pb1, Pa1 et seq.).

Jurisdiction

Petitioner invokes jurisdiction under 28 U.S.C.A. Section 1257(3) and filed timely.

This respondent objects to jurisdiction and demonstrates the absence of jurisdiction in this brief.

Constitutional Provisions

Petitioner cites the contract clause, the fifth amendment, and the fourteenth amendment. These are set out verbatim in its brief (Pb3). These provisions appear nowhere in the record or official edition. [Rule 40(1)(c)] because they were not raised below.

Concise Statement of the Case

Please refer to the opinion of the Supreme Court of New Jersey, 73 N. J. 425 (Pa3, 4).

ARGUMENT

1. Introduction

The New Jersey Statute (Pa5) which regulates the omnibus clauses of motor vehicle liability insurance policies is N.J.S.A. 39:6-46 (hereafter referred to as the omnibus statute). The language applicable to this litigation is as follows:

> The policy shall . . . insure . . . any other person using or responsible for the use of any such motor vehicle with the express or implied consent of the insured . . . (L. 1952, C. 173, Section 24)

N.J.S.A. 39:6-48(b) provides:

> The policy, any written application therefor and any rider or endorsement which shall not conflict with the provisions of this act shall constitute the entire contract between the parties (L. 1952, C. 173, Section 26)

The latter statute is nothing more than codification of the familiar rule that applicable statutes are implied provisions of any contract.

The applicable language of the (Pa5) omnibus clause of the insurance policy of New Jersey Manufacturers Insurance Company (hereafter referred to as NJM) would provide coverage for:

> . . . any other person using such automobile with the permission of the named insured, provided his actual operation . . . is within the scope of such permission.

The law of New Jersey establishes the perimeter of coverage at *consent to use*. NJM cavalierly narrowed the perimeter to permission to *operate*.

In 1966, the verbatim, identical omnibus clause language in the policy of another insurance company was before the Supreme Court of New Jersey. *Selected Risks Ins., Co.* v. *Zullo,* 48 N.J. 362. The Court found the policy "automatically amended" to conform to the omnibus statute (Pa12). The Court really applied the statute in place of the omnibus clause of the insurance policy which was void because unlawful. The NJM policy in this action was issued around 1970 with the omnibus clause language declared unlawful in 1966.

The "standard omnibus clause" (Pb4) is as illegal in New Jersey as the standard burglary.

The Supreme Court of New Jersey in this action was again obliged to apply the omnibus statute because the policy clause "did impermissibly depart from the statute" (Pa12).

In a thorough and well reasoned opinion, the Court cited well established New Jersey cases holding that *use* is broader than *operation* and that coverage is not vitiated by events occurring after *initial permission* to use is extended.

> "The strong legislative policy which would assure financial protection to innocent victims of automobile accidents, embodied in the mandated omnibus clause and long and consistently invoked by our courts in the 'initial permission' cases, applies with no less force to the present situation." (Pa15)

The act which contains the omnibus statute is given an official title by N.J.S.A. 39:6-23, as follows:

> This act shall be known and may be cited as the "Motor Vehicle Security Responsibility Law".

In linking coverage with use, the New Jersey omnibus statute is similar to that of other states. For example, New York and California:

> Provision affording insurance to the named insured with respect to any motor vehicle covered by such policy, and to the same extent that insurance is afforded to the named insured, to any other person using, or legally responsible for the use of such motor vehicle, provided such use is by the named insured or with his permission, express or implied, and within the scope of such permission . . . *California Insurance Code,* 43 *Annotated California Codes,* §115 80.1(b)(4).
>
> No policy or contract of personal injury liability insurance . . . covering liability arising from the ownership, maintenance, or operation of any motor vehicle . . . shall be issued . . . unless it contains a provision insuring the named insured against liability for death or injury sustained . . . as a result of negligence in the operation or use of such vehicle by any person operating or using the same with the permission, express, or implied of the named insured. *McKinney's Consolidated Laws of New York, Book 27, Insurance Law, §167.*

Financial responsibility of motor vehicle owners and operators and the scope of their liability insurance coverage are manifestly matters of tremendous public importance which are subject to the police powers of the States. In the motor vehicle field, as in others, the exercise of police power by statute may have the effect of nullifying some contractual provisions. The police power is supposed to do that if necessary. There is no claim that the NJM omnibus clause predated the omnibus statute and such is not the case. It is difficult to perceive

a constitutional issue in the Petition For Writ of Certiorari. No claim involving the Constitution was previously asserted in this action, nor has this writer seen any case in any state which has raised a constitutional issue with respect to any omnibus clause or statute.

Petitioner's simplistic argument (Pb9 and 10) on the subject of reasonableness of the legislative policy of New Jersey in essence is that if one insurance policy meets legislative requirements, another is constitutionally exempt. Except to note that N.J.S.A. 39:6B-1 (Pb9) (L. 1972, C. 197, effective January 1, 1973) became effective more than a year after the accident in question (August 26, 1971) (Pb3), this argument which totally ignores the interest of the state in regulating the scope of coverage need not be dignified by further discussion.

In *United States Trust Company* v. *State of New Jersey, et al.*, 45 LW 4418 (Pb8), this Court applied a three step analysis: The Court first inquired whether or not an impairment had occurred. The Court determined that there had been impairment. The Court, secondly, distinguished contractual relations to which the State was a party and those to which it was not and noted that financial contractual relations involving the State were involved. The third step was to decide whether or not the impairment was unconstitutional. The majority held that the Constitution had been violated.

(1) In this action, there has been no impairment. The omnibus statute antedated the particular omnibus clause by many years. The New Jersey Supreme Court did not work an impairment. It simply applied the omnibus statute and prior interpretation thereof. The constitutionality of the statute was never questioned at any stage of the New Jersey proceedings. (2) Assuming *arguendo* that an impairment be present, this action does not involve financial contractual relations to which the State was a party and, therefore, significantly differs from *United States Trust Company, supra.* (3) A long, firm line of cases of this Court holds that the legitimate, reserved police power of the State does not yield to claim of constitutional impairment. "Once we are in this domain of the reserve power of a State we must respect the 'wide discretion on the part of the legislature in determining what is and what is not necessary.'" *El Paso* v. *Simmons,* 379 U.S. 497 (1965), 508.

Resort to this Court is literally an afterthought, since not one word about constitutionality has previously, been written or heard in this action.

The claim that the omnibus statute violates other constitutional rights, unsupported by authority, is frivolous.

Against this historical and analytic background, with this action in the posture described, NJM petitions for writ of certiorari.

2. Jurisdiction to grant certiorari is absent pursuant to controlling cases

The validity of the omnibus statute on the ground of its being repugnant to the Constitution of the United States was not "drawn in question" [28 U.S.C.A. Section 1257 (3)] before filing of the Petition For Writ of Certiorari. Thus, the United States Supreme Court lacks jurisdiction to review. Mindful of its concern for issues meeting the requirements of Rule 19, this Court has always been flexible in deciding whether or not a federal issue has been properly *drawn in question* in state court proceedings. In effect, the Court has applied the standard of what common sense would tell any reasonable jurist. Perhaps the

outer limit of this approach is represented by *Annonymous* v. *Baker,* 360 U.S. 287, 288 (1959), in which right to counsel was obviously involved although that issue was not specifically raised in pleadings or expressly passed upon in the state courts. See also *Chambers* v. *Mississippi,* 410 U.S. 284, 289, (1972) in which petitioner's federal claim arising out of evidentiary rulings was first raised in his motion for new trial and then in his appeal to the State Supreme Court.

Within the outer limit of jurisdiction, this Court has made rulings which are as clear as they are fair and reasonable. In *Commercial Bank* v. *Buckingham's Executors,* 5 How 317, 341, it was held that "it must appear, by clear and necessary intendment, that the question must have been raised, and must have been decided, in order to induce the judgment."

Oxley Stove Co. v. *Butter County,* 166 U.S. 648, 655, (1897):

> "Upon like grounds the jurisdiction of this court to reexamine the final judgment of a state court cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a Federal right."

In *Bailey* v. *Anderson,* 326 U.S. 203 (1945), petitioner raised his constitutional claim in the Virginia Supreme Court of Appeals which did not rule on it and accordingly his appeal to the United States Supreme Court was dismissed for want of any properly presented substantial federal question. Nor was it regarded as a Petition for Writ of Certiorari.

Radio Station WOW v. *Johnson,* 326 U.S. 120, 128 (1945):

> "Questions first presented to the highest State Court on a petition for rehearing come too late for consideration here . . ."

CIO v. *McAdory,* 325 U.S. 472, 477 (1945):

> "Since the State Supreme Court did not pass on the question now urged, and since it does not appear to have been properly presented to that court for decision, we are without jurisdiction to consider it in the first instance here."

Street v. *New York,* 394 U.S. 576, 582 (1969):

> "Moreover, this Court has stated that when, as here, the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary."

Monks v. *New Jersey,* 398 U.S. 71 (1970):

> "The further claim advanced by petitioner's appointed counsel in this Court respecting the alleged unconstitutional application of N.J. Stat. Ann. § 2A: 4-37(b) has been raised for the first time upon this writ and the state courts have had no opportunity to pass upon it.
>
> "Accordingly we conclude that the writ of certiorari should be dismissed as improvidently granted, without prejudice to any further appropriate proceedings below."

In this action, there has not been the slightest suggestion of any federal issue in the state court proceedings. It was apparent from the time briefs were submitted to the

trial judge that the adversaries of NJM claimed that the NJM omnibus clause flagrantly violated the New Jersey omnibus statute. A rejoinder that the relevant provision of the omnibus statute is unconstitutional could have been introduced at any time thereafter at any tier of the New Jersey Court system.

Decisions of this Court establish beyond any doubt that it is bound by a State's interpretation of its own statute. *Coleman et al.* v. *Alabama,* 399 U.S. 1, 9 (1970); *Garner* v. *Louisiana,* 368 U.S. 157, 166 (1961); *Cramp* v. *Board of Public Instruction of Orange County,* 368 U.S. 278, 285 (1961); See also *Kingsley International Pictures Corp.* v. *Regents,* 360 U.S. 684, 688 (1959); *Albertson* v. *Millard,* 345 U.S. 242, 244 (1953); *United States* v. *Burnison,* 339 U.S. 87; *Aero Transit Co.* v. *Commissioners,* 332 U.S. 495. No matter what a court of New Jersey might decide or has decided, its interpretation "puts these words in the statute as definitely as if it had been so amended by the legislature." *Winters* v. *New York,* 333 U.S. 507, 514. Thus, a constitutional issue cannot remain inchoate until the highest state court interprets it because such interpretation, past or present, is simply regard das part of the statute, which must properly and colorably be *drawn in question* in order to furnish jurisdiction for this Court to exercise its discretionary power to consider review. A canvass of the contract clause cases cited in *United States Trust Company* v. *State of New Jersey, supra,* reveals that none of these cases reached the Supreme Court without prior presentation of the federal issue in courts below.

The contention that unconstitutional impairment did not occur until the final state court ruling (Pb11) defies belief, particularly since the same alleged impairment must have occurred when the trial judge ruled against petitioner. It is a truism that you don't lose a case until the last court has ruled, but this does not excuse the failure to raise the federal issue timely and properly.

Citing *Barrows* v. *Jackson,* 346 U.S. 249 (1953), petitioner accepts the principle that the impairment clause applies to legislation, not to judgments. It then (Pb11) "submits that where, as here, a state court operating under what it has deemed a 'legislative directive' gives force to a statute thus impairing the contract obligation, jurisdiction of this Court attaches. *Columbia Railway Gas & Electric Co.* v. *South Carolina,* 261 U.S. 236 (1923)." This, indeed, is the holding of *Columbia Railway.* In that case the respondent State contended that the state Supreme Court judgment did not depend upon the statute complained of. This Court ruled that "in real substance and effect, force has been given to the statute complained of . . ." (261 U.S. 245). Jurisdiction was found under the rule reiterated at 261 U.S. 244:

> "As this Court has repeatedly ruled, the Constitution affords no protection as against an impairment by judicial decision."

The Court significantly, however, noted the jurisdictional history of the case at 261 U.S. 246:

> "The sufficiency of the complaint was challenged by demurrer upon the ground, among others, that the contract in question was impaired by the Act of 1917. The demurrer having been overruled, an answer was filed, alleging such impairment and this claim was asserted and insisted upon at every stage of the proceedings to their conclusion in the State Supreme Court."

The failure in the instant action of NJM to raise the federal issue at any stage of the proceedings does not require repetition.

When cited in full context, the passage from *Tidal Oil Co.* v. *Flanagan,* 263 U.S. 444, 453 (1924), quoted by NJM at page 11 of its brief, illuminates another distinction between cases properly showing jurisdiction and the instant action.

> "Other cases cited are *Louisiana* v. *Pilsbury,* 105 U.S. 278, and *Muhlker* v. *New York & Harlem R.R. Co.,* 197 U.S. 544, but in each of them a statute had been passed subsequently to the contract involved and was held to impair it. In such a case this Court accepts the meaning put down upon the impairing statute by the state court as authoritative, but it is the statute as enforced by the State through its courts which impairs the contract, not the judgment of the Court."

If petitioner contends that the judgment of the New Jersey Supreme Court, independent of statute, confers jurisdiction, this has never been the law. If it complains of the omnibus statute, jurisdiction does not attach because no federal issue was properly raised, and there has been no impairment so far as the contract clause is concerned.

3. Jurisdiction to grant certiorari is absent pursuant to Rules 19 and 23

Assuming, *arguendo,* that petitioner had properly proceeded on the federal issue in the state courts, this action, nevertheless, fails to meet criteria of the Rules of the Supreme Court. "Special and important reasons" are not demonstrated. Rule 19. Clearly, a state court has *not* "decided a federal question of substance . . ." Rule 19 (a).

Rule 23 (1) (b) requires petitioner to specify "the stage of the proceedings in the court of first instance and in the

appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g. by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court, such pertinent quotations of specific portions of the record . . . as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari." Petitioner has not made the required showing because it cannot. Moreover, petitioner has not even attempted to demonstrate how or why this Court can find jurisdiction or relax its jurisdictional criteria where the jurisdictional standards of firm case law and Court Rules cannot be met.

This petition involves a disgruntled insurance carrier which violated the state motor vehicle code. The action does not involve the type of issue contemplated by Rule 19. Moreover, the regressive ruling sought by petitioner would abrogate the long settled scope of omnibus coverage in New Jersey and elsewhere to the detriment of thousands of persons presently uninjured and even unborn.

4. Jurisdiction is likewise absent with respect to petitioner's claims arising out of the grant of rehearing in the New Jersey Supreme Court

Petitioner's assault upon the grant of rehearing by the Supreme Court of New Jersey (unsupported by citation) suffers from the same jurisdictional defects stated above. Some additional facts are required to controvert petitioner's argument, assuming some color of jurisdiction be present.

Chief Justice Richard Hughes did not sit at the first hearing in the New Jersey Supreme Court. No reason for his absense has ever been stated, nor was his absence announced in advance. Respondents assumed that he did not sit because NJM was represented by the law office in which he was a partner before his appointment as Chief Justice, the same office representing petitioner now. His assumed disqualification was a moot matter until the six remaining justices divided equally. It was respondents who under these unusual circumstances were denied equal protection of the law, and this point was respectfully made in the motion for rehearing (Ra1) which also stressed that the one sentence ruling of the divided Court (Pa 25) violated the Court's own rule governing form of opinions. Respondents had been denied a full Court because of prior relationships of the Chief Justice, and the ruling of the Court did not fairly constitute even one bite "of the apple" (Pb 12). The Court graciously granted a rehearing before a full Court (Pa 22) and assigned Justice Carton to complete the Court (pursuant to Court Rule providing that power).

It is significant that in the process of the Court's deliberation over an opinion in proper form, Justice Mark A. Sullivan changed his vote, and the final vote was 5 to 2 in favor respondents (73 N.J. 443), Justice Carton also voting for respondents.

The New Jersey Supreme Court did not state reasons in its order granting the rehearing (Pa 22). In the final opinion, it stated (73 N.J. 428, Pa 2):

> "In order to resolve this important issue, we granted rehearing, 73 N.J. —— (1976)."

In effect, the Court noted the motion for rehearing and pursuant to its supervisory powers, granted a rehearing

sua sponte, to provide the hearing and ruling in the form which should have obtained on the first hearing. There was no constitutional infirmity in this procedure which resulted in an untainted and unambiguous decision.

CONCLUSION

The constitutional claims of petitioner do not demonstrate colorable merit. Petitioner has egregiously failed to meet a single jurisdictional requirement of case law, statute, and Court Rule. This respondent respectfully prays that this vexatious petition be denied.

Respectfully submitted,

JUDSON L. LEVIN,
Counsel for Respondent,
Frances Scibetta.

[APPENDIX FOLLOWS]

APPENDIX A

Petition for Rehearing in the Supreme Court of New Jersey

(Filed—October 27, 1976)

SUPREME COURT OF NEW JERSEY

A-15/16 September Term 1976

MOTOR CLUB FIRE & CASUALTY COMPANY,

Plaintiff-Respondent and Cross-Appellant,

vs.

NEW JERSEY MANUFACTURERS INSURANCE COMPANY,

Defendant-Respondent,

and

FRANCES SCIBETTA,

Defendant-Appellant.

To: McElroy, Connell, Foley & Geiser, Esqs.
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Appendix A

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Attorneys for Motor Club Fire &
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SIRS:

Take Notice that Frances Scibetta herewith files her Petition for Rehearing.

PROOF OF SERVICE

I CERTIFY that I mailed two true copies of the annexed Petition for Rehearing and Brief of Frances Scibetta to the attorneys above named at the addresses there shown by ordinary mail on the 27th day of October, 1976.

/s/ JUDSON L. LEVIN
Attorney for Frances Scibetta

BRIEF STATEMENT AND ARGUMENT OF GROUND RELIED UPON

Oral argument in this action took place on September 28th, 1976. The Chief Justice did not sit nor did he participate in the decision of the Court. By order dated October 20, 1976, an equally divided Court affirmed the judgment of the Appellate Division. I respectfully assume that the Chief Justice chose not to sit in this action because New Jersey Manufacturers Insurance Company (N.J.M.) is a client of this former law office which represented N.J.M. in this action. Code of Judicial Conduct, Canon 3C; R.1: 12-1. If so, such decision is consistent with the highest standards of judicial conduct.

Appendix A

Any vote other than equal division would have left the disqualification moot. Only at this posture of the case has the absence of the Chief Justice become critical. By the fortuity of an equally divided court, an opinion of the Appellate Division is affirmed.

The subject of this action is of such importance that this Court, including the Chief Justice, granted the petitions for certification. The importance of this case to Frances Scibetta requires no emphasis. Her cause has been lost through mechanism not provided for by the Court Rules, a disqualifying Justice and the result of equal vote. If the assumption respectfully made above be true, she has been denied the treatment afforded other litigants appearing before this Court. She has been denied equal protection of the law because she has not received the hearing from this Court which any other litigant whose appeal did not involve a former client of a Justice or a former law firm of a Justice would receive. If the Chief Justice would have voted or should vote for affirmance, the result would be the same. If the Chief Justice, however, would have voted or should vote for reversal, his abstention clearly affects the outcome of this action, the law of the State and, secondarily, the law nationally. The pathos and feeling of injustice arising from this situation can be illustrated in the following reconstruction of my conversation with my client.

> Mr. Levin: Mrs. Scibetta, I'm very sorry to report that we lost your appeal in the Supreme Court.
>
> Mrs. Scibetta: Mr. Levin, I read in the newspaper that three judges voted against us and that this means we lost the case. How does this happen?

Mr. Levin: To my knowledge the rule followed by Appellate Courts in an equal vote is that the decision of the lower court is affirmed.

Mrs. Scibetta: Aren't there seven judges on the Supreme Court?

Mr. Levin: Yes. The Chief Justice did not participate in the decision.

Mrs. Scibetta: Why not?

Mr. Levin: I believe that he disqualified himself because N.J.M. is a client of his former law office and was represented by that office.

Mrs. Scibetta: Do you think that he would have been prejudiced against us?

Mr. Levin: No.

Mrs. Scibetta: If he had voted for us, would we have won the case?

Mr. Levin: Yes.

Mrs. Scibetta: Then we may have lost the case because his law office and old client were on the other side?

Mr. Levin: Yes.

Mrs. Scibetta: Would he have heard my case if another insurance company and another law office had been on the other side?

Mr. Levin: I think so.

The conditions responsible for the less than equal hearing accorded Mrs. Scibetta are unusual but not unlikely to recur. They are:

1. An equally divided Supreme Court.

2. A disqualifying Justice.

3. A large insurance company continually involved in litigation.

4. A large law firm continually involved in litigation.

It is submitted that this distinguished Court has the power to furnish Mrs. Scibetta the same hearing which other litigants have when former law firms or clients of a Justice are not involved.

A simple solution is provided when a trial judge is disqualified. The status quo (unlitigated before a trial) is not simply preserved. Another judge is designated. R. 1:12-3(a). The Rules are silent on designating a judge to sit in place of a disqualified appellate judge. The reason for this omission most likely is that such instances are rare and a quorum can usually be convened. A quorum cannot provide equal justice for Mrs. Scibetta, because under comparable conditions another litigant's cause would be decided by seven Justices.

The unsatisfactory nature of the disposition of this appeal is emphasized by the fact that the form of disposition violates the rules of the Court. R. 2:11-3(a) provides for a written opinion. The one sentence disposition of the Court is not an opinion; it is an announcement of deadlock. Numerous Supreme Court opinions adopt the Appellate Division decision but do so by majority vote. R. 2:11-3(e) provides for *Affirmance Without Opinion.* This rule is clearly limited to the Appellate Division.

Affirmance by equally divided court, since not provided by Court Rule, must then be an administrative practice of convenience. Other solutions are conceivable. Providing equal justice to Mrs. Scibetta is likewise an administrative matter. Thus, this petition does not involve substantive issues previously argued, and for that reason the provisions of R. 2:11-6(b), do not apply to this petition. Rather, this petition seeks administrative relief for the substantive reasons occasioned by the deadlock.

Appendix A

RELIEF REQUESTED

The Chief Justice administers all courts (R. 1:33-1) and is presiding Justice of the Supreme Court (R. 2:13-1). He has the power to constitute the Supreme Court to provide equal justice to Mrs. Scibetta, the lack of which could not be apparent until the Court divided equally because one Justice disqualified himself, in this case the Chief Justice himself. Two solutions occur to this counsel:

1. Relax R. 1:12 (Disqualification) pursuant to R. 1:1-2 (Relaxation) since "adherence to it would result [has resulted] in an injustice" (R. 1:1-2). The disqualified Justice should reconsider his disqualification on giving the other Justices and/or counsel an opportunity to be heard. If he determines that he can sit fairly and impartially, he should sit.

2. If he determines that he cannot sit fairly and impartially, or in any event, the Chief Justice can assign a judge "to expedite the business of the Court" pursuant to R. 2:13-2(a).

A rehearing before seven Justices, or in the alternative, before one more Justice is sincerely and respectfully requested.

CONCLUSION

It is ironic and truly unbearable that Frances Scibetta, the victim around whom litigation has swirled, should be denied equal justice before this Court because her adversary is represented by an outstanding law firm which counts a distinguished member of this Court among its

Appendix A

alumni. A rehearing or continued hearing with seven Justices is required to afford her the hearing which any other litigant would have.

Respectfully submitted,

JUDSON L. LEVIN

CERTIFICATION

I certify that this Petition is submitted in good faith and not for purposes of delay.

JUDSON L. LEVIN

DATED: October 27, 1976